



Bureau
of
Driver
Safety

Court Bulletin

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Candice S. Miller,
Secretary of State

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License Actions and Appeal Procedures

SOS License Actions:

The SOS imposes licensing actions under several sections of the Michigan Vehicle Code [the Code; 1949 PA 300, as amended; MCL 257.1 et seq.]. The SOS administratively imposes mandatory actions under sections 303, 319, and 904 of the Code [MCL 257.303, 257.319, and 257.904]. The SOS may also impose licensing actions following a Driver Assessment reexamination under sections 310d and 320 of the Code [MCL 257.310d and 257.320] or an Implied Consent hearing under section 625f of the Code [MCL 257.625f]. Finally, the SOS may deny applications for operator and chauffeur licenses, moped licenses, motorcycle endorsements, and group vehicle designations or endorsements under sections 303, 312b and 312f of the Code [MCL 257.303, 257.312b, and 257.312f].

Appeals to Driver

License Appeal Division (DLAD) under Section 322: Persons aggrieved by final decisions of the SOS, may file appeals with DLAD under

section 322 of the Code [MCL 257.322]. Section 322(1) indicates that the appeal shall be in writing and filed with the SOS within 14 days after the final decision.

Appeals to Circuit

Court under Section 323: Section 323(1) of the Code [MCL 257.323] provides that persons aggrieved by final decisions of the SOS may file a review petition in the circuit court in the person's county of residence. However, when suspensions are imposed under section 625f or by court order under section 328 of the Code [MCL 257.328], then the petition must be filed in the circuit court for the county of arrest.

Section 323(1) indicates that a review petition must be filed within 63 days after the SOS decision is made, except that for good cause, the court may allow the petitioner to file within 182 days. Section 323(2) provides that petitions must include the petitioner's full name, current address, birth date, and driver license number. The subsection also states that the petitioner must serve the SOS's office in Lansing with the court-issued notice of

the hearing dates, a copy of the petition and all supporting affidavits, at least 20 days before the court hearing. If the appeal involves a DLAD hearing held under section 322 or section 625f, then service must be completed at least 50 days before the court hearing. The official SOS address for all service of this type is: 208 N. Capitol Avenue, P.O. Box 30196, Lansing, Michigan 48909-7696.

Court of Appeals Update

Timely Filing Is

Jurisdictional: In a recent Court of Appeals decision, *Mary Lorraine Leone v Secretary of State*, unpublished, CA Case No. 226282, decided November 9, 2001, the Appeals Court concluded that the statutory time limits found in section 323(1) are jurisdictional in nature. The facts are that on June 4, 1997, the SOS issued a mandatory five-year revocation of petitioner Mary Leone's driver license under section 303 of the Code for repeated alcohol convictions. For unknown reasons, the petitioner failed to file a petition to challenge the

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Driver license restoration cases

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imposition of the revocation until early 2000 – nearly three years later. The Appeals Court concluded that the petition was untimely under section 323(1), thus depriving the circuit court of subject matter jurisdiction to hear the appeal. This holding is consistent with previous unpublished decisions that have concluded that circuit courts do not have jurisdiction to review DLAD hearing officer orders if the petition is filed more than 182 days after the date of the DLAD order.

Legislative News

Court Compliance with Section 323: Enrolled Senate Bill 469 [2001 PA 159] added a new subsection (3) to section 303 and a new subsection (11) to section 319. The new language requires the SOS to impose the mandatory revocations and suspensions required by these sections, notwithstanding an opposing court order, unless the court order complies with section 323. The amendments took effect February 1, 2002.

Court Orders to Backdate License Actions

DLAD's Circuit Court Unit (CCU) occasionally receives "Nunc Pro Tunc" court orders seeking to "back date" the starting dates of SOS mandatory license actions. These orders are problematic, inasmuch as neither the SOS nor the courts have clear statutory authority to order the backdating of actions and sanctions. Section 732(1) of the Code [MCL 257.732] provides that a court shall prepare and forward to the

SOS an abstract of court record within 14 days after a conviction, etc. If courts met this statutory requirement, this issue would be moot.

Section 320a(1) of the Code [MCL 257.320a] provides that the SOS shall record an abstract of conviction to a person's record within 10 days after the receipt of the abstract. Similarly, sections 303 and 319 both state that the SOS shall revoke and suspend, respectively, a person's driver license upon receiving an abstract of conviction. A plain reading of these sections clearly indicates that the SOS must take action upon the "receipt" of the abstract – not the date of the court conviction.

As indicated above, the SOS lacks legal authority to backdate or otherwise modify the date that an abstract of conviction is received from a court. In addition, new language in sections 303 and 319 prohibits the SOS from acting upon court orders that do not comply with section 323 procedures. These "Nunc Pro Tunc" orders do not comply

with section 323. The only orders of this type that will be entered on records are in clear cases of computer error when it can be shown that the court attempted to transmit the abstract of conviction to the SOS, but that the transmission failed.

This article was written by Darcel F. Smith, Senior Attorney with the Driver License Appeal Division. If you have any questions about the above article or any other driver license matter, please feel free to call her at (517) 373-1714.

A recent state Court of Appeals opinion, *People v Scott Leonard Rutledge*, CA Case No. 00-007054-AR, February 15, 2002, found that minors who return home after drinking in Canada, where the legal drinking age is 19, can not be charged with Minor in Possession (MIP). Youth can be charged if caught driving in Michigan with even a trace of alcohol in their bodies (Zero Tolerance).

Repeat Offender Statistics - 03/31/2002				
	Totals 2002 YTD	Totals 2001	Totals 10/1/99 - 12/31/2000	Totals 10/1/99 - Present
DWLS RESULTING IN DEATH/INJURY	0	9	10	19
CHILD ENDANGERMENT	17	322	464	803
303 REVOKED/DENIED	3,524	17,269	20,368	41,161
904 ADDITIONALS	8,137	89,145	117,261	214,543
IGNITION INTERLOCK	876	3,456	3,291	7,623
904C PLATE CONFISCATIONS	5,099	21,252	27,031	53,382
IMMOBILIZATIONS	200	4,642	7,408	12,250
FORFEITURES	1	30	104	135
VEHICLES SOLD	428	5,166	8,907	14,501
	ACTIVE	CLEARED		
REG/DENIAL ALCOHOL	103,297	8,649		
REG/DENIAL DWLS	28,504	5,100		
REG/DENIAL GRAND TOTALS	131,801	13,749		

2002 RECIPROCITY UPDATE

INTERNATIONAL CONVENTIONS AND TREATIES

Residents of countries that are signatories to the 1949 United Nations Convention on Road Traffic may drive in this country if they have a valid license from their country of residence. An international driving permit is not required (see Treaties and International Acts, Section 2487 and US Treaties 3 UST 3008).

For licenses that are not in English, an interpreter may be required to determine the license's validity.

Courts and law enforcement officials should not take and destroy foreign driver licenses pursuant to Section 625g.

Besides the United States, listed below are the countries that honor international driving permits:

Afghanistan*	Chad*	Gibraltar	Lebanon	Norway	Sudan
Albania	Chile	Greece	Lesotho	Oman*	Suriname
Algeria	Colombia*	Grenada	Liberia*	Panama	Swaziland
Andorra	Congo	Guatemala	Libya	Papua New Guinea	Sweden
Angola	Costa Rica*	Guernsey	Liechtenstein*	Peru	Switzerland
Antigua**/**	Cuba	Guinea-Bissau*	Luxembourg	Paraguay	Syria
Argentina	Curacao	Guinea*	Macao*	Philippines	Taiwan
Australia	Cyprus	Guyana	Madagascar	Poland	Tanzania
Austria	Czech Rep	Haiti	Malawi	Portugal	Thailand
Bahamas	Denmark	Honduras*	Malaysia	Qatar*	Togo
Bahrain*	Djibouti*	Hong Kong	Mali	Romania	Trinidad & Tobago
Bangladesh	Dominica**	Hungary	Malta	Russia*	Tunisia
Barbados**	Dominican Rep.	Iceland	Mauritania*	Rwanda	Turkey
Belgium	Ecuador	Indonesia*	Mauritius	San Marino	Uganda
Belize	Egypt	Iran*	Mexico*	Sao Tome & Principe*	United Arab
Benin	El Salvador*	Ireland	Monaco	Saudi Arabia*	Emirates*
Bhutan*	Ethiopia*	Israel	Montserrat**/**	Senegal	United Kingdom
Bolivia*	Fiji	Italy	Morocco	Seychelles	Upper Volta
Botswana	Finland	Ivory Coast	Mozambique*	Sierra Leone	(Burkina Faso)*
Brunei*	France (including	Jamaica	Namibia*	Singapore	Vatican City
Bulgaria	French Overseas	Japan	Nepal*	South Africa	Venezuela
Burma*	Territories)	Jersey	Netherlands	Spain	Vietnam
Cambodia	French Polynesia	Jordan	Nevis & Anguilla**/**	Sri Lanka	Western Samoa
Canada	Gabon	Kenya*	New Caledonia	St. Lucia	Yemen*
Cape Verde Islands*	Gambia	Korea Rep.	New Zealand	St. Christopher	Yugoslavia
Cayman Islands	Germany	Kuwait*	Nicaragua*	St. Vincent & The	Zaire
Central African Rep.	Ghana	Laos	Niger	Grenadines	Zambia
					Zimbabwe

*Not part of 1949 Convention: International Driving Permit Honored.

**U.S. driver license and International Driving Permit recognized on presentation to local police and payment of Special Registration Fee upon arrival.

***Contracting states which honor inter-American driving permits (Convention on Regulation of Inter-American Motor Vehicle Traffic of American States, Washington, D.C. 1943) as of June 1993.

SPECIAL RECIPROCITY AGREEMENT

Under MCL 257.302a, the department must publish a list of countries whose residents need not obtain a Michigan driver license to operate a vehicle in this state based on a special agreement, provided they are licensed in their country of residence and they do not receive compensation for vehicle operation. These special agreements allow Michigan residents whose employment requires them to travel in foreign countries to obtain foreign driving privileges and licenses at reduced rates. **Currently only France and Germany are on the list.**

Notice to the Courts, Prosecuting Attorneys, and Law Enforcement Agencies Regarding Reciprocal Driving Privileges

Pursuant to Section 302a(2) of the Michigan Vehicle Code [1949 PA 300, as amended by 1990 PA 181; MCL 257.302a; MSA 9.2002(1)], please take notice that reciprocal driving privileges were extended to France effective January 4, 1991, and to The Federal Republic of Germany effective November 10, 1997. This means that a person holding a valid driver license issued by France or Germany may operate a passenger vehicle in Michigan on such a license.

Please take further notice that the reciprocal driving privileges extended to France and Germany have not been withdrawn.

If you have any questions concerning this notice, please call the Michigan Department of State, Compliance Division, at (517) 373-8252.

No metal plates prior to adjudication

It has been reported that persons are appearing at a branch office with a court order that instructs the Department to replace the 904C paper plate with a metal plate prior to the offense being adjudicated. There is no allowance for such a replacement in the Michigan Vehicle Code.

Section 257.904c(2) of the Michigan Vehicle Code states:

"A temporary vehicle registration plate issued under this Section is valid until the charges against the person are dismissed, the person pleads guilty or *nolo contendere* to those charges, or the person is found guilty of or is acquitted of those charges."

Consequently, courts should not order the Secretary of State to issue a metal plate prior to adjudication on vehicles that have been issued 904c paper plates.

Courts should count additional, not convictions toward repeat offender

There is still some confusion regarding the October 1, 1999, Repeat Offender Legislation. The confusion is in regard to Section 257.904 of the Michigan Vehicle Code. Drivers who have actions on their driving records indicating that they were convicted of a moving violation during a period of suspension, revocation, or denial, will receive a like, (same length) additional suspension imposed by the Secretary of State. The driver will receive a 30-day additional suspension if convicted of a moving violation during an open FAC/FCJ Suspension.

The conviction does not have to be a Drove While License Suspended (DWLS) conviction. The conviction can be for any moving violation.

Example, the driver could be convicted of speeding or disobeying a stop sign and still receive a like additional suspension, revocation, or denial, because the driver was driving

while suspended, revoked, or denied.

When counting the number of priors an individual has on their driving record, it is the additional suspensions, revocations, and denials that need to be counted, not the convictions.

Tinted windows is an equipment violation

People v Pitts, Mich App, (March 14, 1997) held that obstructed vision or control, should not include Offense Code 2870, (1) poster, sign, non-transparent material, etc., on windshield or front side window; (2) obstructed rear or side rear window due to excessive tint/film; and (3) obstructed rear window without two outside rear view mirrors. These now will be equipment violations, Offense Code 3400. This is a civil infraction with zero points.

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